

# U.S. Customs Service

## *General Notices*

### COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 11-2002)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of November 2002. The last notice was published in the CUSTOMS BULLETIN on December 11, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: December 10, 2002.

JOANNE ROMAN STUMP  
*Chief,*  
*Intellectual Property Rights Branch.*

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0200219	20021121	20221121	BVLGARI CATALOG--JEWELRY 2002/2003	BULGARI S.P.A.	N
COP0200220	20021121	20221121	BVLGARI - JEWELLERY 2002/2003	BULGARI S.P.A.	N
SUBTOTAL RECORDATION TYPE 2					
TKK0200849	20021104	20120226	M (PLUS DESIGN)	MILWAUKEE BREMERS BASEBALL CLUB	N
TKK0200850	20021104	20120226	MILWAUKEE BREMERS (PLUS DESIGN)	MILWAUKEE BREMERS BASEBALL CLUB	N
TKK0200851	20021104	20120226	MILWAUKEE BREMERS (PLUS DESIGN)	MILWAUKEE BREMERS BASEBALL CLUB	N
TKK0200852	20021104	20120226	MILWAUKEE BREMERS (PLUS DESIGN)	MILWAUKEE BREMERS BASEBALL CLUB	N
TKK0200853	20021104	20040731	ESPRIT (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200854	20021104	20061202	ESPRIT DE CORP.	ESPRIT IP LIMITED	N
TKK0200855	20021104	20060715	ESPRIT (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200856	20021104	20090419	ESPRIT (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200857	20021104	20060920	ESPRIT/KAY (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200858	20021104	20060920	ESPRIT/KAY (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200859	20021104	20080315	ESPRIT (STYLIZED)	ESPRIT IP LIMITED	N
TKK0200860	20021104	20120506	BERNINA	FRITZ GEGAUJ AKTIENGESellschaft	N
TKK0200861	20021104	20120915	WATEC	PAYMENT PROTECTION SYSTEMS, INC.	N
TKK0200862	20021108	20110213	PAYMENT PROTECTION SYSTEMS	PAYMENT PROTECTION SYSTEMS, INC.	N
TKK0200863	20021108	20110220	ON TIME (PLUS DESIGN)	CHUNG INC.	N
TKK0200864	20021113	20130406	MISCELLANEOUS DESIGN (GUM SAN IN CHINESE CHARACTERS)	CHUNG INC.	N
TKK0200865	20021113	20060928	DESIGN (PORTRAIT OF SIR WALTER RALEIGH)	BWT BRANDS INC.	N
TKK0200866	20021113	20100610	RALEIGH	BWT BRANDS INC.	N
TKK0200867	20021113	20050915	RALEIGH (PLUS DESIGN)	BWT BRANDS INC.	N
TKK0200868	20021114	20120507	HOBBY HILL	HOBBY HILL LIGHTING, INC.	N
TKK0200869	20021114	20120326	SCHOOL OF HARD KNOCKS (SERVICE MARK)	SOHK SPORTSWEAR, INC.	N
TKK0200870	20021114	20110925	DESIGN (BOY WEARING SHIRT DESIGNED WITH LETTERS SOHK)	SOHK SPORTSWEAR, INC.	N
TKK0200871	20021114	20120409	HARD KNOCKS	SOHK SPORTSWEAR, INC.	N
TKK0200872	20021114	20111115	MARTINI & ROSSI	MARTINI & ROSSI CORPORATION	N
TKK0200873	20021114	20120212	MARTINI & ROSSI	MARTINI & ROSSI CORPORATION	N
TKK0200874	20021114	20060511	MARTINI	MARTINI & ROSSI CORPORATION	N
TKK0200875	20021114	20060511	MARTINI	MARTINI & ROSSI CORPORATION	N
TKK0200876	20021114	20071107	RINNAT (STYLIZED)	RINNAT KABUSHIKI KAISHA	N
TKK0200877	20021118	20120305	SMISTAR (PLUS DESIGN)	INTERNATIONAL SYNDICATE GROUP	N
TKK0200878	20021119	20120524	WOLVERINE	WOLVERINE WORLD WIDE, INC.	N
TKK0200879	20021119	20120424	BATES	WOLVERINE WORLD WIDE, INC.	N
TKK0200880	20021119	20121102	COACH	COACH SERVICES, INC.	N
TKK0200881	20021119	20070318	COACH	COACH SERVICES, INC.	N
TKK0200882	20021119	20091109	TOYOTA	TOYOTA JIDOSHA KABUSHIKI KAISHA	N
TKK0200883	20021119	20120630	BUDGE LITE	BUDGE INDUSTRIES, INC.	N
TKK0200884	20021119	20061231	BUDGE	BUDGE INDUSTRIES, INC.	N
TKK0200885	20021119	20030914	PREMIER	BUDGE INDUSTRIES, INC.	N
TKK0200886	20021119	20040201	SEMI-CUSTOM	BUDGE MANUFACTURING CO., INC.	N
TKK0200887	20021119	20031018	FF	FENDI ADELE S.R.L.	N
TKK0200888	20021119	20100220	FF	FENDI ADELE S.R.L.	N
TKK0200889	20021119	20091205	FF FENDI	FENDI ADELE S.R.L.	N
TKK0200890	20021119	20070524	MARTHA'S VINEYARD	FENDI ADELE S.R.L.	N
TKK0200892	20021119	20120901	FENDI	FENDI ADELE S.R.L.	N
TKK0200893	20021119	20030705	FENDI	FENDI ADELE S.R.L.	N
TKK0200894	20021119	20070526	FENDI	FENDI ADELE S.R.L.	N

U.S. CUSTOMS SERVICE

REC NUMBER	EFF. DT.	EXP. DT.	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0200895	20021119	20080216	FF FENDI	FENDI ADELE S.R.L.	N
TMK0200896	20021119	20070519	FF FENDI	FENDI ADELE S.R.L.	N
TMK0200897	20021119	20060114	FF FENDI	FENDI ADELE S.R.L.	N
TMK0200898	20021119	20070317	FF FENDI	FENDI ADELE S.R.L.	N
TMK0200899	20021119	20040726	FF FENDI	FENDI ADELE S.R.L.	N
TMK0200900	20021119	20040705	FENDI	FENDI ADELE S.R.L.	N
TMK0200901	20021119	20070317	FENDISSIME	FENDI ADELE S.R.L.	N
TMK0200902	20021119	20061022	N DESIGN	MOBILE HI-TECH WHEELS	N
TMK0200903	20021119	20120804	SMITH & WESSON	SMITH & WESSON CORPORATION	N
TMK0200904	20021119	20090616	TAR GARD	VENTURI, INC.	N
TMK0200905	20021119	20120326	AUDIOLIBROS DEL MUNDO, INC.	AUDIOLIBROS DEL MUNDO, INC.	N
TMK0200906	20021119	20101226	BULTACO CEMOTO (& DESIGN)	HDW ENTERPRISES, INC.	N
TMK0200907	20021120	20080210	R & R	OCEAN DUKE CORPORATION	N
TMK0200908	20021120	20071118	SUPER STAR	OCEAN DUKE CORPORATION	N
TMK0200909	20021120	20070211	YEE LAM	OCEAN DUKE CORPORATION	N
TMK0200910	20021120	20110828	CASANOVA	OCEAN DUKE CORPORATION	N
TMK0200911	20021120	20110926	DELTA KITCH	OCEAN DUKE CORPORATION	N
TMK0200912	20021120	20110926	DELTA FRESH	OCEAN DUKE CORPORATION	N
TMK0200913	20021120	20111106	POLAR	OCEAN DUKE CORPORATION	N
TMK0200914	20021120	20111030	OCEAN CROWN	OCEAN DUKE CORPORATION	N
TMK0200915	20021120	20080609	PARTY TRAY COCKTAIL	OCEAN DUKE CORPORATION	N
TMK0200916	20021120	20071104	EIFA AND DESIGN	OCEAN DUKE CORPORATION	N
TMK0200917	20021120	20070225	CELLSTAR	OCEAN DUKE CORPORATION	N
TMK0200918	20021120	20080210	GULF	OCEAN DUKE CORPORATION	N
TMK0200919	20021120	20060813	BLACK TIE AND DESIGN	OCEAN DUKE CORPORATION	N
TMK0200920	20021120	20051230	DD	OCEAN DUKE CORPORATION	N
TMK0200921	20021120	20040910	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200922	20021120	20060608	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200923	20021120	20110611	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200924	20021120	20110806	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200925	20021120	20031130	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200926	20021120	20110528	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200927	20021120	20110924	DOLBY	DOLBY LABORATORIES LICENSING COR	N
TMK0200928	20021120	20108627	DD DOLBY DIGITAL	DOLBY LABORATORIES LICENSING COR	N
TMK0200929	20021120	20120901	PRO LOGIC	DOLBY LABORATORIES LICENSING COR	N
TMK0200930	20021120	20040726	DOLBY SURROUND	DOLBY LABORATORIES LICENSING COR	N
TMK0200931	20021120	20120624	7-UP	DR. PEPPER/SEVEN UP	N
TMK0200932	20021120	20120621	CHRISTIAN DIOR	PARFUMS CHRISTIAN DIOR U.S.A.	N
TMK0200933	20021120	20120723	WOLVERINE	WOLVERINE WORLDWIDE, INC.	N
TMK0200934	20021120	20120723	DESIGN (GLOVE)	WOLVERINE WORLDWIDE, INC.	N
TMK0200935	20021120	20040925	YELIN	YELIN ENTERPRISE CO. LTD.	N
TMK0200936	20021120	20120915	S.C.S. AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200937	20021120	20050822	P.C.S. AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200938	20021120	20080721	PARAISO	YELIN ENTERPRISE CO. LTD.	N
TMK0200939	20021120	20080315	OCEAN DUKE AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200940	20021120	20110820	HEADLAND AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200941	20021120	20060325	DUKE AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200942	20021120	20060307	D.C. AND DESIGN	YELIN ENTERPRISE CO. LTD.	N
TMK0200943	20021120	20050817	ORCHID AND DESIGN	OCEAN DUKE CORPORATION	N

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN NOVEMBER 2002

12/02/2002  
08:07:44

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200944	20021121	20030915	MERCEDES (STYLIZED)	DAIMLERCHRYSLER AG	N
TMK0200945	20021121	20080121	MERCEDES-BENZ	DAIMLERCHRYSLER AG	N
TMK0200946	20021121	20080121	DESIGN (MERCEDES BENZ LOGO)	DAIMLERCHRYSLER AG	N
TMK0200947	20021121	20080506	DESIGN (MERCEDES BENZ LOGO)	DAIMLERCHRYSLER AG	N
TMK0200948	20021121	20120924	CC CC CC CC	COACH SERVICES, INC.	N
TMK0200949	20021121	20120430	STL (STYLIZED)	ST. LOUIS CARDINALS, L.P.	N
TMK0200950	20021121	20120723	CARDINALS (& DESIGN)	ST. LOUIS CARDINALS, L.P.	N
TMK0200951	20021121	20120312	TB (& DESIGN)	TAMPA BAY DEVIL RAYS, LTD.	N
TMK0200952	20021121	20120212	TAMPA BAY DEVIL RAYS (& DESIGN)	TAMPA BAY DEVIL RAYS, LTD.	N
TMK0200953	20021122	20090620	ITALIA D'ORO	BOYD COFFEE COMPANY	N
TMK0200954	20021122	20040405	ITALIA D'ORO	BOYD COFFEE COMPANY	N
TMK0200955	20021122	20130106	SENNENKO & DESIGN	KOTAKE SHOKAI, LTD.	N
TMK0200956	20021122	20080217	GAME BOY POCKET	NINTENDO OF AMERICA, INC.	N
TMK0200957	20021122	20110320	FRESH FROM AMERICA'S HEARTLAND	BATH & BODY WORKS, INC.	N
TMK0200958	20021126	20110320	PRI - 400 (COLLECTIVE MARK)	APA - THE ENGINEERED WOOD ASSN.	N
TMK0200959	20021127	20051226	GRAMMY LOGO	NATIONAL ACADEMY OF RECORDING	N
TMK0200960	20021127	20040830	DESIGN (SERVICE MARK)	NATIONAL ACADEMY OF RECORDING	N
TMK0200961	20021127	20100822	AGENERASE	NATIONAL ACADEMY OF RECORDING	N
TMK0200962	20021129	20100822	TRIZIVIR	GLAXO GROUP LTD	N
TMK0200963	20021129	20111106	ADVAIR DISKUS	GLAXO GROUP LTD	N
TMK0200964	20021129	20090525	ZIAGEN	GLAXO GROUP LTD	N
TMK0200965	20021129	20090525	ZIAGEN	GLAXO GROUP LTD	N
TMK0200966	20021129	20090525	ZIAGEN	GLAXO GROUP LTD	N
TMK0200967	20021129	20090525	ZIAGEN	GLAXO GROUP LTD	N
TMK0200968	20021129	20100422	ZINACEF	GLAXO LABORATORIES LTD	N

SUBTOTAL RECORDATION TYPE 118

TOTAL RECORDATIONS ADDED THIS MONTH 120

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, December 11, 2002.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

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PROPOSED MODIFICATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF MEN'S SWIMWEAR

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to the classification of a men's garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify New York Ruling Letter (NY) I85950, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a men's garment. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 27, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9<sup>th</sup> Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify one ruling relating to the tariff classification of a men’s garment. Although in this notice Customs is specifically referring to the modification of New York decision (NY) I85950, dated September 13, 2002, (attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer’s failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I85950, Customs classified a men’s garment under heading 6203, HTSUSA, which provides for, among other things, men’s shorts. Customs has reviewed the classification of the garment and has deter-

mined that the cited ruling is in error. Accordingly, we intend to modify NY I85950 to reflect the proper classification of the goods under sub-heading 6211.11.1010, HTSUSA, the provision for men's swimwear of man-made fibers. Customs also intends to modify any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965981 (attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 9, 2002.

JOHN ELKINS,  
(for Myles B. Harmon, Acting Director,  
Commercial Rulings Division.)

[Attachments]

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[ATTACHMENT A]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
*New York, NY, September 13, 2002.*  
CLA-2-62:RR:NC:WA:355 I85950  
Category: Classification  
Tariff No. 6203.43.4030 and 6211.11.1010

MS. AMANDA WILSON  
DILLARD'S, INC.  
*1600 Cantrell  
Little Rock, AK 72201*

Re: The tariff classification of men's shorts and swimwear from China.

DEAR MS. WILSON:

In your letter dated September 9, 2002, you requested a classification ruling.

You submitted two samples of garments identified as styles S35MX302 and S35MX402. they will be returned as you have requested.

Style S35MX 402 has an outer garment shell made of 100 percent nylon woven fabric. It has an interior knit mesh liner, two side seam pockets partially lined with mesh fabric, a back patch pocket with mesh fabric forming part of the pocket front and a flap on the back pocket. The garment has a fly front which is fastened secure by means of hook and loop fabric tape. The waistband fastens at the front also by means of hook and loop fabric tape. The waistband is partially elasticized (in the back portion), and has an interior cord which is inserted the entire length of the waistband. It emerges in the front at two spots more than six inches distant from each other and then is threaded through the front to form a four grommet lace-up tie.

Style S35MX302 has an outer garment shell of 100 percent nylon woven fabric. The garment features an interior knit mesh liner, two front pockets with mesh fabric forming the pocket material, a back pocket with a grommet for drainage, a fully elasticized waistband and a fully functional interior drawcord.

Both styles are imported with matching fabric drawstring storage pouches. The pouches measure approximately 7 by 9 inches and have a pleated bottom to afford storage space for the garment. These pouches are tacked to the garments and are sold at retail

with the garments. They are not offered for separate retail sale, You do not purchase them separately from the garments and they do not carry their own unique inventory or style number. They are being treated as composite goods.

The applicable subheading for style S35MX402 will be 6203.43.4030, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' trousers, bib and brace overalls, breeches and shorts, of synthetic fibers, other, other, other, other, shorts, men's. The duty rate will be 28.3 percent ad valorem.

The applicable subheading for style S35MX302 will be 6211.11.1010, Harmonized Tariff Schedule of the United States (HTS), which provides for track suits, ski-suits and swimwear, other garments, swimwear, men's or boys', of man-made fibers, men's. The duty rate will be 28.2 percent ad valorem.

Style S35MX402 falls within textile category designation 647. Style S35MX302 falls within textile category designation 659. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at [www.customs.gov](http://www.customs.gov). In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille R. Ferraro at 646-733-3046.

ROBERT B. SWIERUPSKI,  
*Director,*  
*National Commodity Specialist Division.*

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[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC.*

CLA-2 RR:TC:TE 965981 SG  
Category: Classification  
Tariff No. 6211.11.1010

MS. AMANDA WILSON  
DILLARD'S CUSTOMS COMPLIANCE DEPT.  
DILLARD'S INC.  
*1600 Cantrell*  
*Little Rock, AK 72201*

Re: Modification of New York Ruling (NY) I85950, dated September 13, 2002; Men's woven swimwear, heading 6211, HTSUS; shorts, heading 6203, HTSUS.

DEAR MS. WILSON:

This is in response to your letter dated October 8, 2002, in which you ask the Customs Service to reconsider, in part, New York ruling (NY) I85950, issued to you on September 13, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a men's short with attached drawstring pouch, designated as Style S35MX402. The garment was classified under subheading 6203.43.4030, HTSUSA, in the provision for men's shorts. It is your opinion that the subject merchandise should be classified as men's swimwear in subheading 6211.11.1010, HTSUSA. We



have reviewed that ruling and found it to be partially in error. Therefore, this ruling modifies NY I85950.

*Facts:*

The submitted garment, Style S35MX402, is a pair of men's shorts with a woven 100% nylon outer shell and a knit mesh liner. The garment has a relaxed fit and measures approximately 19 inches from the waist to the hemmed bottom of the leg. The garment has a fly front, which is fastened secure by means of a hook and loop fabric tape. The waistband is partially elasticized (the back portion) and has an interior drawstring inserted into the waistband. On the front inner portion of the waistband, the drawstring exits at two spots approximately six inches distant from each other and is then threaded back through the front outer portion of the waistband forming a four grommet lace-up tie closure. The garment also features two side seam pockets partially lined with mesh fabric (which allows for water to escape the pocket), and two inches below the waistband, an exterior back patch pocket with mesh fabric forming part of the pocket front and a flap with a tab on the back pocket, and a coin or key pocket on the interior right side of the waistband. The exterior rear pocket has a hook and loop fabric tape closure. The garment has two contrasting colored overlaid stripes approximately one inch above the hemmed leg openings. The garment was produced in China.

The garment will be imported with a matching drawstring pouch. The pouch measures approximately 7 inches by 9 inches and has a separate bottom to afford storage for the garment. It has a drawstring-like locking closure. It is tacked to the garment and will be sold at retail with the garment. It will not be offered for separate retail sale.

*Issue:*

Whether the submitted sample is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

*Law and Analysis:*

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the *Hampco* decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The *Guidelines* state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category. Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In Headquarters Ruling Letter (*HRL*) 081477, dated March 21, 1988, we stated that in order to determine whether a garment is designed and constructed for swimming, we will

first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. See **HQ 952751**, dated January 12, 1993; **HQ 952209**, dated October 2, 1992; **HQ 951841**, dated August 11, 1992; and **HQ 950501**, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three *Hampco* features); and (b) where ALL three features are not present, we then look to the design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment for guidance.

In the case of the subject merchandise, it is apparent that the submitted sample meets the first criteria: It has an elasticized waistband (there is no requirement that the entire waistband be elasticized). See, **HQ 087264**, dated June 13, 1990.

The drawstring on the submitted sample is threaded through all but the center five or six inches of the waistband. The ends of the drawstring are then threaded and drawn through 4 spaced grommets in a lacing fashion on the center of the waistband before the ends are tightened and tied. The drawstring on the garment before us serves to tighten the entire span of the waistband, while keeping the lace-up front of the waistband relatively flat. The tightening provided by the drawstring is not minimal and serves the function of adjusting the size of the waistband. Accordingly, it is our view that the garment has a functional drawstring. The garment therefore meets the second criteria.

Customs has been consistent in ruling that even in those instances where the first two factors enumerated by the court in *Hampco* are present, the third factor (the garment is designed and constructed for swimming) must still be present. The garment is made of a woven outer shell fabric and possesses a mesh liner. The fabric used to construct this article is relatively lightweight, quick drying, and will not retain an inordinate amount of water. The garment's outseam length is not so long so that it inhibits swimming. The pockets have been constructed to facilitate drainage. We note that garment pocket openings which allow for drainage is a feature that is only useful when found on swim trunks. Accordingly, these features indicate that the garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUSA.

The shorts are packaged inside a matching bag and the shorts and bag are sold together at retail. In *HRL 955787* of April 26, 1994, Customs classified a pair of men's flannel boxers sold inside a matching carrying bag. In that ruling, Customs classified the carrying bag and shorts as a composite good. We stated therein:

In *HRL 087280*, dated July 16, 1990 we addressed the tariff classification of a carrying bag imported with a poncho. The carrying bag was not specially shaped or fitted to hold its contents and was suitable for repetitive use. We concluded that the poncho and the bag constituted a composite article pursuant to General Rule of Interpretation 3(b), with the poncho imparting its essential character. Similarly, in *HRL 086343*, dated July 13, 1990, we classified a carrying bag sold with a windbreaker as a composite article with the essential character imparted by the garment. Recently, we classified a textile drawstring bag imported with blocks as a composite article and concluded that the blocks lent the essential character to the unit.

The instant carrying bag is sold as a unit with the shorts. It is not specially shaped or fitted to hold its contents and is suitable for repetitive use. Based upon the foregoing precedent, the carrying bag and shorts shall be classified as a composite article. The shorts lend the essential character to the unit. Accordingly, the carrying bag shall be classified with the shorts.

As this case is virtually identical to the situation in *HRL 955787*, i.e., shorts in a bag, the goods at issue here are classified as composite goods and the shorts impart the essential character.

*Holding:*

The submitted pair of shorts, style S35MX402, is properly classified in subheading 6211.11.1010, HTSUS, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28.2 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we sug-

gest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

NY I85950, dated September 13, 2002, is hereby modified.

MYLES B. HARMON,  
*Acting Director,*  
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